

Statement of David Keating  
President, Institute for Free Speech  
before the  
Senate Committee on Local Government, Transparency and Ethics  
March 11, 2025

Chair Bowers and members of the Committee, on behalf of the Institute for Free Speech, thank you for allowing me to speak at this hearing.

In August 2022, we published our [Free Speech Index](#) of the 50 states. It's the most comprehensive report ever published on state laws regulating speech about government and public policy. An editorial in *The Wall Street Journal* told readers, "it's worth spending a few minutes to read a new report from the Institute for Free Speech. It's an index of how state laws and regulations treat political committees, grassroots advocacy, independent expenditures, and the like. The results aren't partisan, and they're probably not what you expect."

Unfortunately, Kansas earned a disappointing 55% score in the report's section analyzing lobbying laws in the 50 states.

Minor changes would fix the deficiencies in Kansas's lobbying law and make it much more similar to the law adopted by Congress. That's primarily what SB 286 proposes to do. As documented in the attachment, the crucial provisions in the bill closely track the definitions in federal lobbying law at 2 U.S. Code §1602.

### **First Amendment Defects in the Current Law**

The current lobbying law is likely unconstitutional, and if challenged, there is a good chance a court will rule that significant portions of the law violate the First Amendment. The definitions in K.S.A. 46-222 and K.S.A. 46-225 are overly broad and vague, chilling the First Amendment rights to speech and "to petition the Government for a redress of grievances."

For example:

- "Promoting or opposing in any manner" (K.S.A. 46-225) could encompass casual conversations, op-ed articles, newspaper editorials, public advocacy, websites, YouTube or TikTok videos, social media posts, not just direct lobbying.
- The \$1,000 expenditure threshold (K.S.A. 46-222) sweeps in grassroots activists or small organizations who spend modestly to influence policy but don't see themselves as traditional "lobbyists." Many of these groups might inadvertently break the law.
- A reference to specific legislation does not appear to be required for a communication to be regulated as grassroots lobbying.
- Newspapers and other media appear to be covered by the current law.
- The law forces "any person formally appointed as the primary representative of an organization ... to lobby in person," even if that person is a volunteer. The United States Court of Appeals for the Eighth Circuit ruled a similar Missouri mandate unconstitutional.

## **Grassroots Advocacy Should Not Be Regulated**

The First Amendment says in part that “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.”

The act of petitioning for redress of grievances has deep American roots, going back to pamphleteers like Thomas Paine and his now-famous *Common Sense*. It is celebrated in our culture, from the paintings of Norman Rockwell to the town council meetings on television shows. The Supreme Court has said the right to petition the government is “among the most precious of the liberties safeguarded by the Bill of Rights.”<sup>1</sup>

Grassroots advocacy, also called “grassroots lobbying,” is a term used to describe efforts to exercise petition rights. Grassroots advocates organize citizens, urge them to contact government officials, and educate the public to affect public policy in a classic American style. Grassroots advocacy includes activities as simple and common today as groups of people attending a meeting in colorful matching t-shirts to demonstrate strong public support for (or opposition to) a proposed bill to public officials.

University of Missouri economist Jeffrey Milyo explains the importance of grassroots lobbying:

Would-be grassroots lobbyists face an inherent difficulty known in political science literature as the problem of collective action: Oftentimes, self-interested individuals do not have a sufficient incentive to take actions that would be in the interest of a group of people. Political participation is rife with such problems, from voting and contributing to candidates to contacting legislators about issues of shared concern. . . .

One lesson that emerges from scholarly research is that political entrepreneurs can solve the collective-action problem. More effective groups are those where some members care enough about the group to take on the cost of coordinating, communicating and mobilizing other individuals. These groups become organized and function as interest groups. . . . [G]rassroots lobbyists rely on patrons and contributors to provide resources to inform, coordinate and mobilize group members.

Seen in this light, the frequent assumption that authentic grassroots lobbying can only occur absent political entrepreneurs and professional expertise is simply ridiculous. Unorganized and ordinary citizens with legitimate and latent preferences for policy cannot be expected to monitor the legislative calendar constantly just in case an item of concern should pop up; nor can ordinary citizens be expected to fully comprehend the legislative process so that they can contact the appropriate committee members at the appropriate time. Advocacy groups and other entrepreneurs provide a valuable function for unorganized interests by monitoring legislation and sending action alerts when appropriate, as well as helping to coordinate grassroots action for maximum effect by

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<sup>1</sup> *United Mine Workers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967).

informing people about the issues at hand, the relevant actors to contact and the time frame for action.<sup>2</sup>

In short, grassroots advocacy is vital to representative democracy in action.

Some states, including Kansas, seek to regulate these organizations and their activity under grassroots lobbying laws that impose regulatory burdens on this vital right. Many small or new groups aren't even aware that such a law would regulate such a quintessentially American activity.

## **Conclusion**

When discussing speech, it's important to remember that we are dealing with the essence of living in a free society—the ability to discuss ideas for how to improve our laws. When in doubt, government should always err on the side of freedom. Some modest but important changes to your lobbying law would achieve that goal and enhance free speech rights in Kansas.

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<sup>2</sup> Jeffrey Milyo, Ph.D., “Mowing Down the Grassroots: How Grassroots Lobbying Disclosure Suppresses Political Participation,” Institute for Justice. Available at: [https://ij.org/wp-content/uploads/2015/03/mowing\\_down\\_the-grassroots.pdf](https://ij.org/wp-content/uploads/2015/03/mowing_down_the-grassroots.pdf) (April 2010).

## Senate Bill No. 286

**Sec. 3.** K.S.A. 46-225 is hereby amended to read as follows: 46-225.

(a) Except as otherwise provided, "lobbying" means:

(1) ~~Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter~~ **Providing any oral or written communication by an individual, including electronic communication, that is made on behalf of a lobbying client to a member of the legislature, elected officer of either chamber of the legislature, any employee of a member of the legislature, any employee of a committee of the legislature and any employee of the leadership staff of the legislature with regard to the formulation, modification or adoption of legislation;**

## 2 USC §1602:

### Definitions Lobbying contact

#### (A) Definition

- The term "lobbying contact" means **any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to-**
- **(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals)...**

## Senate Bill No. 286

## 2 USC §1602: Definitions

**“Lobbying” does not include:**

*a communication that is:*

- *(A) Made by a public official acting in the public official's official capacity;*
- *(B) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;*
- *(C) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, internet or other medium of mass communication;*

**B) Exceptions**

*The term “lobbying contact” does not include a communication that is-*

- *(i) made by a public official acting in the public official's official capacity;*
- *(ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;*
- *(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;*

## Senate Bill No. 286

**“Lobbying” does not include (continued):**

a communication that is:

- (D) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence official action;
- (E) testimony given before a committee or task force, or submitted for inclusion in the public record of a hearing conducted by such committee or task force;

## 2 USC §1602: Definitions

### **B) Exceptions (continued)**

The term “lobbying contact” does not include a communication that is—

- (v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official...
- (vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

## Senate Bill No. 286

**“Lobbying” does not include (continued):**

*a communication that is:*

- *(F) information provided in writing in response to an oral or written request by the legislature, governor, any executive agency or any judicial agency for specific information;*

## 2 USC 1602: Definitions

**B) Exceptions (continued)**

*The term “lobbying contact” does not include a communication that is-*

- *(viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;*